

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

M.R., S.J., C.B., D.W., A.B., M.B., An.B, J.B.,
K.S., T.M., A.R., M.J.B., J.H., H.C., THE ARC
OF WASHINGTON, SERVICE EMPLOYEES
INTERNATIONAL UNION HEALTHCARE
775NW and PUGET SOUND ALLIANCE
FOR RETIRED AMERICANS,

Plaintiffs,

v.

SUSAN DREYFUS, in her professional
capacity as Secretary of Washington State
Department of Social and Health Services and
WASHINGTON STATE DEPARTMENT OF
SOCIAL AND HEALTH SERVICES, a
Department of the State of Washington,

Defendants.

No. 2:10-cv-02052-TSZ

PLAINTIFFS' REPLY IN SUPPORT OF
THEIR *EX PARTE* MOTION FOR STAY
PENDING APPEAL

Plaintiffs filed the Motion for Stay of this Court's February 9, 2011 Order denying
Plaintiffs' Motion for Preliminary Injunction (Dkt. 171) pending Plaintiffs' appeal of that order.
See Amended Notice of Appeal (Dkt. 174). Such a stay is intended to cover the gap in time
between this Court's order and the Ninth Circuit's decision on the merits of that expedited
appeal, or, in the alternative, for 30 days to allow the Ninth Circuit more time to consider
Plaintiffs' Second Emergency Motion for an Injunction Pending Appeal. *See* Plaintiffs Motion
for Stay (Dkt. 176). Plaintiffs *do not* seek an injunction beyond the time necessary for the Ninth
Circuit to make a substantive ruling. *Cf.* Defendants' Response to Plaintiffs' Motion for Stay,
Dkt. 180, at page 4.

1 Plaintiffs' request for a stay is appropriate under Fed. R. Civ. Pro. 62(c). It would: avoid
2 disruption in Plaintiffs' needed Medicaid benefits during the court proceedings; avoid interim
3 mailings by the State reducing benefits followed by another set of mailings by the State once
4 again re-instating benefits if the Ninth Circuit provides emergency relief or reverses this Court's
5 preliminary injunction ruling; and provide the Ninth Circuit more time to review the appellate
6 briefing and consider Plaintiffs' Emergency Motion. See Plaintiffs' Motion for Stay, Dkt. 176,
7 2-3.

8 Plaintiffs filed their Second Emergency Motion with the Ninth Circuit on Friday,
9 February 11, 2011. Yesterday, the Ninth Circuit set a briefing schedule on the emergency
10 motion; it reflects Defendants' request that the Ninth Circuit rule on or before February 18, 2011
11 to enable the State to make changes to or stop, if necessary, its planned notice to beneficiaries
12 reinstating the reductions, which currently is scheduled to be sent on or about February 23, 2011.
13 If this Court were to stay its decision pending a ruling by the Ninth Circuit on the merits of
14 Plaintiffs' Preliminary Injunction appeal, or grant a short, 30-day stay, it would allow the Ninth
15 Circuit more time to make a considered ruling on Plaintiff's Emergency Motion while sparing
16 the State the expense of sending out multiple rounds of notices reducing and then re-instating
17 benefits.

18 While Plaintiffs continue to believe that the law and the overwhelming evidence
19 submitted to this Court in support of Plaintiffs' Motion for Preliminary Injunction (Dkts. 95, 155
20 and supporting documents) justify this stay, and justified the relief originally sought by Plaintiffs
21 in that motion, they also recognize the Court has issued its Order and an appeal is pending on it.
22 Plaintiffs *do not* intend this motion for stay to be a motion for reconsideration of the Court's
23 Order. Plaintiffs simply request that this Court allow the Ninth Circuit more time to consider
24 their motion and appeal, without putting the State to the expense of multiple notices if the Ninth
25 Circuit ultimately reverses this Court's preliminary injunction decision.

1 DATED this 15th day of February, 2011.

2 MacDONALD HOAGUE & BAYLESS

ALTSHULER BERZON

3
4 By: /s/ Andrea Brenneke
Andrea Brenneke, WSBA # 22027
5 Attorneys for Plaintiffs

By: /s/ Stacey Leyton
6 Stacey Leyton, CABA #203827
7 *pro hac vice* Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing to the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 15th day of February, 2011.

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